

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: AVON ANTI-AGING SKINCARE  
CREAMS AND PRODUCTS MARKETING  
AND SALES PRACTICES LITIGATION

Case No. 1:13-cv-00150-JPO-KNF

ECF Case

**DECLARATION OF LORI B. LESKIN**

I, Lori B. Leskin, declare:

1. I am a partner at the law firm, Kaye Scholer LLP, counsel for defendant Avon Products, Inc. (“Avon”).

2. I submit this declaration in support of Avon’s opposition to plaintiffs’ motion for class certification.

**Deposition Transcripts**

3. Attached as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the deposition of plaintiffs’ proffered expert, Norman Weiner, Ph.D., taken January 9, 2015.

4. Attached as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the deposition of plaintiffs’ proffered expert, Steven Weisbrot, taken January 6, 2015.

5. Attached as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the deposition of plaintiff Tara Grandberry-Tillman, taken on December 5, 2014.

6. Attached as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the deposition of plaintiff Lorena Trujillo, taken May 5, 2014.

7. Attached as **Exhibit 5** is a true and correct copy of excerpts from the transcript of the deposition of plaintiff Monique Quintana, taken May 20, 2014.

8. Attached as **Exhibit 6** is a true and correct copy of excerpts from the transcript of the deposition of Ashleigh Young Santamaria, former Head of Global Advertising at Avon,

taken September 15, 2014.

9. Attached as **Exhibit 7** is a true and correct copy of excerpts from the transcript of the deposition of Carole Lartigue-Teabout, a former Manager in the Product and Consumer Research Center at Avon, taken September 8, 2014.

10. Attached as **Exhibit 8** is a true and correct copy of excerpts from the transcript of the deposition of Stephen D. Gettings, Ph.D., Avon's Vice President for Product Safety, Integrity and Regulatory Affairs, taken August 21, 2014.

**Exhibits Referred to in the Declaration of Uma Santhanam**

11. Attached as **Exhibit 9** is a true and correct copy of a document entitled Executive Summary and Claims Substantiation for ANEW Reversalist Night Renewal Cream, dated July 1, 2009 (AVON\_ANEW0018190-18203).

12. Attached as **Exhibit 10** are true and correct copies of poster presentations and abstracts of research conducted by Avon scientists regarding the technology in the ANEW Reversalist line of products.

- a. **Exhibit 10-A** is a true and correct copy of the poster and abstract entitled S. Chen *et al.*, *The Role of Insulin-Like Growth Factor-1 (IGF-1) in Wound Healing of Human Skin Cells*, which was published in the Journal of Investigative Dermatology (April 2009) and presented at the 69th Annual Meeting of the Society of Investigative Dermatology.
- b. **Exhibit 10-B** is a true and correct copy of the poster and abstract entitled D. Ptchelintsev *et al.*, *The Effect of L-4-Thiazolylalanine, A Non-Proteogenic Amino Acid, On Biological Processes Essential for Maintaining Skin Elasticity and Improving the Appearance of Skin*, which was published in the Journal of Investigative Dermatology (April 2009) and presented at the 69th Annual Meeting

of the Society of Investigative Dermatology.

- c. **Exhibit 10-C** is a true and correct copy of the poster and abstract entitled Y. Chen *et al.*, *IGF-1 Regulates Aging-Related Gene Expression in Skin*, which was published in the Journal of Investigative Dermatology (April 2009) and presented at the 69th Annual Meeting of the Society of Investigative Dermatology.
  - d. **Exhibit 10-D** is a true and correct copy of the poster J. Lyga *et al.*, Southeast Asian Medicinal Plant Extracts Effect on the Synthesis of Extracellular Matrix Proteins in Human Skin, which was presented at the 10th International Congress of Dermatology.
13. Attached as **Exhibit 11** is a true and correct copy of the report for study CBIVT.Activin.001, dated August 3, 2008 (AVON\_ANEW0029753-29755).
14. Attached as **Exhibit 12** is a true and correct copy of the report for study CBITV.Activin.002, dated August 3, 2008 (AVON\_ANEW0029756-29758).
15. Attached as **Exhibit 13** is a true and correct copy of the report for study CBIVT.GAGProd.RI3343, dated August 17, 2007 (AVON\_ANEW0029800-29802).
16. Attached as **Exhibit 14** is a true and correct copy of the report for study CBIVT.Activin.003, dated February 5, 2009 (AVON\_ANEW0038647-38652).
17. Attached as **Exhibit 15** is a true and correct copy of the report for study KGL 6617, dated May 27, 2009 (AVON\_ANEW0018207-18218).
18. Attached as **Exhibit 16** is a true and correct copy of the report for study CyberDERM S08-94, dated March 29, 2009 (AVON\_ANEW0018232-18235).
19. Attached as **Exhibit 17** is a true and correct copy of a document entitled Executive Summary and Claims Substantiation for ANEW Reversalist Renewal Serum, dated

July 2, 2009 (AVON\_ANEW0018236-18251).

20. Attached as **Exhibit 18** is a true and correct copy of the report for study CBIVT.Activin.004, dated December 30, 2008 (AVON\_ANEW0140449-140453).

21. Attached as **Exhibit 19** is a true and correct copy of the report for study CBIVT.ElProd.020, dated November 7, 2008 (AVON\_ANEW0140481-140484).

22. Attached as **Exhibit 20** is a true and correct copy of excerpts from the Avon brochure for Campaign 21, 2009 (AVON\_ANEW0007080, 7082-7085).

23. Attached as **Exhibit 21** is a true and correct copy of a document entitled Executive Summary and Claims Substantiation for ANEW Reversalist Day Renewal Cream, dated July 10, 2009 (AVON\_ANEW0017855-17864).

24. Attached as **Exhibit 22** is a true and correct copy of the report for study CBIVT.Activin.005, dated December 30, 2008 (AVON\_ANEW0029748-29752).

25. Attached as **Exhibit 23** is a true and correct copy of the report for study CBIVT.ElProd.021, dated November 7, 2008 (AVON\_ANEW0029795-29799).

26. Attached as **Exhibit 24** is a true and correct copy of the report for study KGL 6686, dated May 28, 2009 (AVON\_ANEW0017972).

27. Attached as **Exhibit 25** is a true and correct copy of a document entitled Executive Summary and Claims Substantiation for ANEW Reversalist Illuminating Eye System, dated September 25, 2009 (AVON\_ANEW0017988-17976).

28. Attached as **Exhibit 26** is a true and correct copy of the report for study KGL 6687, dated May 29, 2009 (AVON\_ANEW0018118-18123).

29. Attached as **Exhibit 27** is a true and correct copy of a document entitled Cell Biology Claims Substantiation for ANEW Clinical Advanced Wrinkle Corrector, dated May 4,

2007 (AVON\_ANEW0106479-106485).

30. Attached as **Exhibit 28** is a true and correct copy of the report for study L02-D002, dated May 5, 2003 (AVON\_ANEW0140437-140448).

31. Attached as **Exhibit 29** is a true and correct copy of the report for study KGL 5963, dated May 16, 2006 (AVON\_ANEW0016455-16459).

32. Attached as **Exhibit 30** is a true and correct copy of excerpts from a document entitled Summary of Statistical Analysis of KGL 5963 by J. Richard Trout, Ph.D., dated August 13, 2006 (AVON\_ANEW0030224-30228, 30281).

33. Attached as **Exhibit 31** is a true and correct copy of the report for study KGL 7183, dated August 16, 2011 (AVON\_ANEW0016358-16368).

34. Attached as **Exhibit 32** is a true and correct copy of Shafer-Korting *et al.*, "The Use of Reconstructed Human Epidermis for Skin Absorption Testing: Results of the Validation Study," *Alternative to Laboratory Animals*, 36: 161-187 (2008).

35. Attached as **Exhibit 33** is a true and correct copy of U.S. Patent No. 5,091,171. This exhibit was marked as Exhibit 9 at the deposition of Norman Weiner, Ph.D.

#### **Exhibits Referred to in the Declaration of Jennifer Weinstein**

36. Attached as **Exhibit 34** is a true and correct copy of the report for study 08-200, dated February 24, 2009 (AVON\_ANEW0097158-97268).

37. Attached as **Exhibit 35** is a true and correct copy of the executive summary for study 08-200 (AVON\_ANEW0038423).

38. Attached as **Exhibit 36** is a true and correct copy of a chart of verbatim responses to open-ended questions in study 08-200 (AVON\_ANEW0038425).

39. Attached as **Exhibit 37** is a true and correct copy of the report for study 08-201, dated February 24, 2009 (AVON\_ANEW0018252-18365).

40. Attached as **Exhibit 38** is a true and correct copy of the executive summary for study 08-201 (AVON\_ANEW0038424).

41. Attached as **Exhibit 39** is a true and correct copy of a chart of verbatim responses to open-ended questions in study 08-201 (AVON\_ANEW0113402).

42. Attached as **Exhibit 40** is a true and correct copy of a combined statistical analysis for studies 08-200 and 08-201, dated April 14, 2009 (AVON\_ANEW0057278-57338).

43. Attached as **Exhibit 41** is a true and correct copy of the report for study 08-252, dated June 16, 2009 (AVON\_ANEW0017865-17971).

44. Attached as **Exhibit 42** is a true and correct copy of a chart of verbatim responses to open-ended questions in study 08-252 (AVON\_ANEW0108385).

45. Attached as **Exhibit 43** is a true and correct copy of the report for study 08-251, dated June 16, 2009 (AVON\_ANEW0018000-18117).

46. Attached as **Exhibit 44** is a true and correct copy of a chart of verbatim responses to open-ended questions in study 08-251 (AVON\_ANEW0108611).

47. Attached as **Exhibit 45** is a true and correct copy of the report for study 02-106, dated November 7, 2003 (AVON\_ANEW0016369-16454).

#### **Exhibits Referred to in the Declaration of Sylvie Biragnet**

48. Attached as **Exhibit 46** is a true and correct copy of the report of a June 2012 study entitled Facial Skincare Benefit Framework (AVON\_ANEW0015965-16001).

49. Attached as **Exhibit 47** is a true and correct copy of the report of U.S. results for a study entitled Avon ANEW Global Brand Equity Research, dated October 10, 2011 (AVON\_ANEW0015840-15922).

50. Attached as **Exhibit 48** is a true and correct copy of excerpts from an Avon brochure for Campaign 1, 2009 (AVON\_ANEW0005325, 5327).

51. Attached as **Exhibit 49** is a true and correct copy of a summary chart of efficacy claims made in Avon's brochures for the five ANEW products at issue during the period October 23, 2008 through December 31, 2013, followed by excerpts of the Avon brochures referenced in the chart.

52. Attached as **Exhibit 50** is a true and correct copy of the storyboards and script for the 2009 "Power" television ad for ANEW Reversalist Night Renewal Cream and ANEW Reversalist Renewal Serum (AVON\_ANEW0125314 and AVON\_ANEW0104546-104547).

53. Attached as **Exhibit 51** is a true and correct copy of a document entitled US Link™ Results for AVON ANEW Reversalist, dated August 2009 (AVON\_ANEW0122821-122876).

54. Attached as **Exhibit 52** is a true and correct copy of the script for the 2010 television ad for ANEW Reversalist Illuminating Eye System (AVON\_ANEW0055471-55472).

55. Attached as **Exhibit 53** is a true and correct copy of the storyboards for the 2010 "Regimens" television ad for ANEW products. (AVON\_ANEW0034142-34147).

56. Attached as **Exhibit 54** is are true and correct copies of the Avon brochures for Campaign 22, 2008 (AVON\_ANEW0004811-4908) and Campaign 21, 2010 (AVON\_ANEW0009537-9638)

57. Attached as **Exhibit 55** is a true and correct copy of the report of U.S. results of a study entitled Avon Brochure Habits and Practices Report, dated November 2010 (AVON\_ANEW0015619-15725).

58. Attached as **Exhibit 56** is a true and correct copy of returns data produced by Avon for the ANEW products at issue (AVON\_ANEW0142563 and AVON\_ANEW0142564).

59. Attached as **Exhibit 57** are true and correct copies of customer reviews of the

ANEW products at issue that were posted on Avon's website. These reviews are publicly available online at reviews.avon.com, and were printed on January 27, 2015.

60. Attached as **Exhibit 58** are true and correct copies of reviews of the ANEW products at issue that appear on third-party websites. These reviews are publicly available online at www.viewpoints.com, www.makeupalley.com, www.totalbeauty.com, www.amazon.com and www.ebay.com, and were printed on January 27, 2015.

61. Attached as **Exhibit 59** are true and correct copies of examples of news articles, magazines and blogs that discuss or review the ANEW products at issue. These articles were either produced by Avon (AVON\_ANEW0035882-35883, 35890-35892) or are publicly available online from the following addresses and were printed on January 27, 2015:

- a. <http://www.prevention.com/beauty-1/annual-defy-your-age-beauty-awards>
- b. <http://www.fashionmagazine.com/beauty/2011/01/12/winners-9th-annual-readers-choice-beauty-awards/5/>
- c. <http://www.usmagazine.com/celebrity-beauty/news/4-tricks-for-hydrating-dry-skin-201276>
- d. <http://fromhiptohousewife.com/aging/avon-reversalist-product-review/>

#### **Exhibits Referred to in the Declaration of Rupinder Singh**

62. Attached as **Exhibit 60** is a true and correct copy of a summary exhibit summarizing the Avon sales data produced in this litigation (AVON\_ANEW0142559-142562). Pursuant to Fed. R. Evid. 1006, the underlying data have been provided to plaintiffs' counsel and are available for review by the Court if requested.

63. Attached as **Exhibit 61** is a true and correct copy of a chart detailing purchases made by plaintiff Tara Tillman from the avon.com website (AVON\_ANEW0142566). This document was also marked as Exhibit 9 to the deposition of Tara Tillman.



64. Attached as **Exhibit 62** is a true and correct copy of a chart detailing purchases made by plaintiff Tara Tillman from Avon as an Independent Sales Representative (“ISR”) for Avon (AVON\_ANEW0142567). This document was also marked as Exhibit 10 to the deposition of Tara Tillman.

**Exhibits Referred to in the Declaration of Nevena Srebrena**

65. Attached as **Exhibit 63** is a true and correct copy of the standard contract between Avon and each new ISR in effect as of 2009.

66. Attached as **Exhibit 64** is a true and correct copy of the standard contract between Avon and each new ISR in effect as of February 2013 (AVON\_ANEW0015614-15618).

67. Attached as **Exhibit 65** is a true and correct copy of the Advertising and Promotion Policies and Guidelines for ISRs, dated 2008 (AVON\_ANEW0015576-15591).

68. Attached as **Exhibit 66** is a true and correct copy of the Policies for ISRs, dated February 2012 (AVON\_ANEW015592-15608).

69. Attached as **Exhibit 67** are true and correct copies of charts showing the discounts available to ISRs as of 2008 and 2013 (AVON\_ANEW0015574-15575).

**Additional Exhibits Referenced in Avon’s Memorandum  
In Opposition to Plaintiffs’ Motion for Class Certification**

70. Attached as **Exhibit 68** is a true and correct copy of the Declaration of Lisa Thomas-Jemison, dated June 30, 2014, and the attachments thereto. This declaration was previously submitted to the Court on August 21, 2014 at Docket No. 105.

71. Attached as **Exhibit 69** is a true and correct copy of plaintiffs’ initial disclosures, dated February 20, 2014.

72. Attached as **Exhibit 70** is a true and correct copy of the Class Action Complaint in *Lorena Trujillo v. Avon Products, Inc.*, No. 12-cv-09084 (C.D. Cal.) (Docket No. 1), dated

October 23, 2012.

73. Attached as **Exhibit 71** is a true and correct copy of Declaration of Rosa Aguilar, dated June 30, 2014, together with a certified English translation of the same. This declaration was previously submitted to the Court on August 21, 2014 at Docket No. 105.

74. Attached as **Exhibit 72** is a true and correct copy of the errata sheet to the deposition of Tara Grandberry-Tillman, dated January 19, 2015.

75. Attached as **Exhibit 73** is a true and correct copy of excerpts from the transcript of testimony of Norman Weiner, Ph.D., at a jury trial in the case captioned *Tristrata Tech., Inc. v. Mary Kay, Inc.*, No. 01-127 (D. Del.), on March 2, 2005. A copy of these excerpts was marked as Weiner Ex. 8 to Dr. Weiner's deposition.

76. Attached as **Exhibit 74** is a true and correct copy of a letter from Lori B. Leskin to The Honorable J. Paul Oetken, dated August 21, 2014, a copy of which was filed on ECF as Docket No. 105.

77. Attached as **Exhibit 75** is a true and correct copy of excerpts from the transcript of the hearing held in this matter on October 14, 2013.

78. Attached as **Exhibit 76** is a true and correct copy of the Declaration of Steven Weisbrot in Support of Plaintiffs' Motion for Class Certification, dated November 1, 2013, filed in *Ebin v. Kangadis Food Inc.*, No. 13-cv-2311 (S.D.N.Y.),

79. Attached as **Exhibit 77** is a true and correct copy of the avon.com product page for ANEW Clinical Advanced Wrinkle Corrector (<https://www.avon.com/product/33842/anew-clinical-advanced-wrinkle-corrector>), accessed January 28, 2015.

I declare under penalty of perjury under the laws of the State of New York and the United States that the foregoing is true and correct.

Dated: January 30, 2015  
New York, New York



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Lori B. Leskin